IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.322 OF 2003

Dhanji Kanji Haria Plaintiff

versus

Amazon Investments and others Defendants

Mr.Jain i/by P.M.Shah for plaintiff.

Ms.Reshma Thakwani i/by Pravin Mehta & Mithi & Co. for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th July 2005

PC :

1. Heard Mr.Shah appearing for plaintiff. M/s.Pravin Mehta & Mithi & Co. have filed their appearance for the defendants. The Summons for Judgement was duly served on them. The Summons for Judgement is taken out as early as in September 2003. No affidavit in reply is filed till date. Learned advocate appearing for the defendants states that defendants have not given any instructions and this is the reason why no affidavit could be filed. She states that several letters were addressed to the defendants so that instructions could be given to

appropriately deal with the Summons for Judgement. Since no instructions are forth coming, she seeks leave to withdraw her appearance. She states that necessary application for discharge of Pravin Mehta & Mithi & Co. as advocates for defendants has been filed after due intimation to the defendants. In the light of this statement of the learned advocate, defendants advocate M/s.Pravin Mehta & Mithi & Co. are discharged as advocates for defendants. There is no dispute that Summons for Judgement has been duly served.

2. Mr.Jain contends that present suit is filed as a summary suit not only on the basis of writing at Exhibit-A but also on the basis that in repayment of the loan advanced by cheque, the plaintiff has received interest @ 18% p.a. from December 2000 to August 2002. He also submits that the receipt is executed on 9th July 1997. He states that even prior to the said period the plaintiff had issued a cheque on 23rd October 2000. However, the cheque was dishonoured. He relies upon a decision of this Court reported in AIR-2003-Bom-168. In the light of the fact that there is an acknowledgement in writing and that interest was paid as also sum of Rs.50,000/- was

sought to be paid in part payment by cheque which was dishonoured, the claim is maintainable under Order XXXVII of the CPC.. I am satisfied from the perusal of the plaint and the original documents that the claim is within limitation. Therefore, plaintiff is entitled to a decree as prayed. Refund of court fees and computation of advocates costs as per rules.

(S.C.DHARMADHIKARI, J.)